December 21, 2009

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex-Parte* Presentation
GN Docket Nos. 09-40, 09-47, 09-51, 09-137

Dear Secretary Dortch:

Birch Communications, Inc. ("Birch") respectfully submits for the Commission's consideration the attached proposal for an alternative broadband deployment strategy for unserved and underserved rural consumers. Birch's proposal is intended as a rapid and cost-effective alternative to achieve the goal of rural broadband deployment mandated by the American Recovery and Reinvestment Act of 2009 ("Recovery Act"). If implemented, this proposal could eliminate hundreds of millions of dollars of unnecessary funding and provide broadband services to rural communities within a very short timeframe rather than years.

Birch would welcome the opportunity to discuss and answer any related follow-up questions to this proposal. If you have any questions concerning this filing, please contact the undersigned.

Respectfully submitted,

BIRCH COMMUNICATIONS, INC.

Christopher Bunce
Vice President and General Counsel

Attachment

cc: **Congressman Jim Marshall**

BIRCH COMMUNICATIONS INC.

AN ALTERNATIVE BROADBAND DEPLOYMENT STRATEGY FOR LAST MILE ACCESS TO UNSERVED AND UNDERSERVED RURAL CONSUMERS

Background

The American Recovery and Reinvestment Act of 2009 (the "Recovery Act") established several broadband initiatives and provides $6.9 billion in discretionary appropriations for rural development activities such as broadband infrastructure in rural areas. One initiative included funding for the Broadband Technology Opportunities Program ("BTOP"), which is administered by the National Telecommunications and Information Administration ("NTIA") in consultation with the Federal Communications Commission ("FCC"). The BTOP is designed to develop and expand broadband services to rural and underserved areas and improve access to broadband by public safety agencies. Another initiative included funding for the Broadband Initiatives Program ("BIP"), which is administered by the Rural Utilities Service ("RUS") of United States Department of Agriculture ("USDA"). This program is designed to support the expansion of broadband service in rural areas through financing and grants to projects that provide access to high speed service and facilitate economic development in locations without sufficient access to such service.

The stated purposes of BTOP are to: (1) provide access to broadband service to consumers residing in unserved areas of the United States, (2) provide improved access to broadband service to consumers residing in underserved areas of the United States, and (3) to provide broadband education, awareness, training, equipment, and support to various community agencies.[1] This proposal serves to address an alternative for achieving the first and second goals, providing improved access to broadband service to consumers residing in *unserved and underserved areas* of the United States.

The July 9, 2009, Notice of Funds Availability defines underserved areas between Last Mile and Middle Mile[2] projects. The "last mile" is the copper loop that connects the public switched network to the customer premises.[3] A proposed funded area may qualify as underserved for last mile projects if at least one of the following factors is met: (1) No more than 50% of the households in the area have access to facilities-based, terrestrial broadband service at greater than 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to consumers, (2) No fixed or mobile broadband service provider advertises broadband transmission speeds of at

[1] *See* Title VI, Section 6001(b)(1)-(3).

[2] The "middle mile" is the long-haul network link before the last mile that connects to the customer premises.

[3] Copper loop technology has been the technology for voice communications across America for decades, yet only recently, since the 1990s, have service providers been successful at deploying a pervasive communications channel on a mass market basis to consumers, following opening up of the public switched telecommunications network to competitive carriers with the enactment of the Telecommunications Act of 1996.

broadband subscribership for the proposed area is 40% of households or less. A proposed area for Middle Mile projects is underserved if one interconnection point terminates in a proposed funded service area that qualifies as underserved or underserved for Last Mile projects.

What most rural consumers, both business and residential, do have today is a basic local telephone line, provided by one of hundreds of telephone exchange carriers across the country. Often times in rural areas they are served by a "carrier of last resort," usually an incumbent local exchange carrier ("ILEC") that must serve the rural area if no other provider is located in the area, or a competitive local exchange carrier ("CLEC") if the economics to serve the area make it feasible for the CLEC to enter the local marketplace. CLECs were created to foster competition in telecommunications following the break-up of the Baby Bells in 1984 and the enactment of the Telecommunications Act of 1996.

DSL is the technology most commonly used by local telephone carriers for providing high-speed data services.[4] DSL electronically enhances the conventional copper telephone voice line, enabling it to simultaneously provide both voice service and high-speed data traffic. While there are a number of variations of DSL, the most common residential service is asymmetric DSL, or ADSL. The service is asymmetric because it typically provides download speeds that are faster than the upload speeds. Conventional ADSL services offers downloads at speeds ranging from 1.5 mbps to 5 mbps or 8 mbps over shorter distances. Newer technologies being deployed can support download speeds of 20-30 mbps.

Many CLECs, such as Birch Communications, currently lease the last mile from the ILECs, including AT&T, Verizon, Qwest and rural carriers, pursuant to interconnection agreements. These agreements are required to be maintained by carriers by the Telecommunications Act of 1996. The rates ILECs can charge CLECs are determined through ratemaking proceedings by the respective states' public utility commissions. DSL is provided over this last mile copper loop.

ILECs typically lease the last mile to CLECs at a tiered rate depending upon how far the consumer resides from a top metropolitan statistical area ("MSA"). The farther away from a large city or Zone 1 MSA, the ILECs have historically argued, the greater the cost to serve the consumer and therefore the greater the price its retail consumers must pay and the greater the wholesale costs to the CLEC reselling the last mile to its consumers. Zone 2 pricing covers outlying communities closer in vicinity to the top MSAs. The rural communities the Broadband Act intends to reach are currently included to a great extent in the Zone 3 areas - where ILECs charge the highest consumer retail price and the highest wholesale price for CLECs to pay to be able to reach these consumers.

[4] *See* http://wireless.fcc.gov/outreach/index.htm?job=dsl .

As an example, the following table illustrates the rates charged to CLECs by AT&T (formerly BellSouth) in the Southeast, including the percent Zone 3 rates are greater than the Zone 1 rates for a 2-wire copper loop:

	Zone 1	Zone 2	Zone 3	Zone 3 increase over Zone 1
AL	$11.55	$20.04	$33.65	191.34%
FL	$9.77	$13.88	$24.63	152.10%
GA	$10.80	$12.47	$19.83	83.61%
KY	$9.64	$14.37	$30.59	217.32%
LA	$11.77	$22.39	$48.26	310.03%
MS	$10.98	$15.91	$25.04	128.05%
NC	$10.75	$19.05	$30.33	182.14%
SC	$13.76	$20.38	$26.04	89.24%
TN	$12.48	$16.31	$21.32	70.83%

The ILECs have historically argued that they need to charge higher rates to recover the cost of their network for reaching these Zone 2 and Zone 3 communities. One recurring question is whether the ILECs have yet finally recovered after 100 years of investment in the public switched telephone network ("PSTN") enough revenue to finally allow equalization of zone rates. This has been a point of contention for years, but the question of cost recovery for the Baby Bells need not be answered here in order for this proposal to be pursued.

The Proposal

Birch proposes that the Administration take immediate action to equalize Zone 1, Zone 2, and Zone 3 last mile rates across the United States. Were this to occur, CLECs such as Birch Communications could immediately begin deploying cost-effective broadband services to consumers throughout rural America via high-speed DSL, well in excess of the minimum speeds stated in the funding criteria. DSL could be deployed on the current public switched telecommunications network without the need for one backhoe to break through even one small town Main Street in rural America. This deployment strategy is a needs-based initiative—services would be provided to consumers and only consumers that *want* broadband access, as opposed to a "build it and they will come" strategy that, under current plans, could mean wasteful spending of taxpayer dollars.[5] This strategy would mean consumers could have broadband in their homes and businesses in a very short timeframe (as early as 90 days), as opposed to waiting up to two years or more as outlined in numerous construction proposals currently under consideration.[6] Moreover, nearly all consumers, residential and business

[5] And it was the "build it and they will come" investment strategy in the end of the last decade that caused so many telecommunications carriers to fold during the dot-com bust. Overbuilt networks contemplated an assumed customer need for services that never panned out, trenching through cities big and small across the country. It would be unfortunate for the government to similarly lose such investment dollars through grants and loans that may not be successful and may not be repaid in the future.

[6] *See* http://www.ntia.doc.gov/broadbandgrants/applications/search.cfm reflecting hundreds of construction proposals currently under consideration for federal grants and loans.

consumers, have access to a local telephone line[7] - the vast majority of the intended beneficiaries of the Recovery Act's broadband deployment goals have the first step of deployment *already* in place. The final step is simply allowing cost-effective access to last mile copper loops, so carriers may serve rural consumers with broadband service in *Atlanta, Kansas* at the same speeds and quality available to consumers in *Atlanta, Georgia*. Small communities around the country could have service available at the same speeds consumers in New York City, Chicago, and Los Angeles have access to today, but the current cost barrier must first be addressed.

The Administration could determine that funding of this proposal may come from at least three sources: (1) the Universal Service Fund, (2) BTOP or BIP could allocate grant funds to offset CLEC costs to access the last mile from the ILECs, (3) enact regulations to cause state utility commissions to eliminate the ILEC rate differential between zones, or (4) a combination of the foregoing or other sources yet to be identified.

Universal Service Fund. First, a possible source is the Universal Service Fund, a $7 billion federal phone-subsidy program mandated by the Telecommunications Act of 1996 to meet the following goals: to promote the availability of quality services at just, reasonable, and affordable rates; to increase access to advanced telecommunications services throughout the Nation; and to advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas.[8] Carriers can file to be reimbursed from this fund for costs of serving rural consumers. Despite funding from Universal Service, ILECs continue charging both consumers and CLECs leasing these facilities a higher rate for those consumers farthest from larger, more consumer density cities. The Universal Service Fund is funded by consumers through a charge on their phone bills. The fund subsidizes phone service in rural areas and for low-income households. Proposals to revamp the fund have in the past provoked resistance from rural phone companies. Smaller rural phone companies depend on the fund for operating revenues. Larger carriers serving these communities, such as incumbent local exchange carriers AT&T, Qwest and Verizon, rely far less on Universal Service subsidies compared to their other revenue sources. The Administration could investigate the availability of Universal Service monies for equalizing zone pricing under this proposal.

Federal CLEC subsidies. Another alternative sourcing option would be to allow CLECs to file for Recovery Act grants in order to offset the Zone 2 and Zone 3 last mile costs. This may be the simplest and quickest method for CLECs to begin serving rural consumers. CLECs would continue to pay the current interconnection agreement rates with ILECs across the country, but would be allowed to file for monthly or quarterly reimbursement from Recovery Act funds for the price differences between zones. This could be a long-term solution or could be a short-term solution to provide immediate access to consumers while longer construction builds approved for BTOP or BIP funding are being built over the coming years.

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[7] An FCC report estimated that 95.7% of all U.S. households subscribe to home telephone service. *See* Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Telephone Subscribership in the United States* (December 2009).

[8] The Universal Service Fund is also used to provide certain services to schools and libraries as well as rural health care providers.

Eliminate the ILEC rate differential. The Administration could fulfill its broadband deployment goals by also finally and definitively eliminating the discrepancy between rates charged in rural America and urban America via enacting legislation and interpretive regulations that would eliminate the ability of ILECs to charge different rates for the same service based on rural location. This approach would also require protective measures to ensure that ILECs did not raise all rates to the Zone 1 levels.

Other options. Finally, this proposal is intended to contribute to the dialogue between lawmakers on alternative broadband strategies, which may bring to light other sources for funding and elimination of rate discrimination for rural consumers.